

APPENDIX A.

Federal Rules of Civil Procedure :

Rule 1. *Scope of Rules.*

These rules govern the procedure in the district courts of the United States in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

Rule 6. *Time.*

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(b) *Enlargement.* When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion (1) with or without motion or before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion permit the act to be done after the expiration of the specified period where the failure to act was the result of excusable neglect; but it may not enlarge the period for taking any action under Rule 59, except as stated in subdivision (c) thereof, or the period for taking an appeal as provided by law.

(c) *Unaffected by Expiration of Term.* The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the expiration of a term of court. The expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.

Rule 60. *Relief from Judgment or Order.*

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(b) *Mistake; Inadvertence; Surprise; Excusable Neglect.* On motion the court, upon such terms as are

just, may relieve a party or his legal representative from a judgment, order or proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. The motion shall be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court (1) to entertain an action to relieve a party from a judgment, order, or proceeding, or (2) to set aside within one year, as provided in Section 57 of the Judicial Code, U. S. C., Title 28, § 118, a judgment obtained against a defendant not actually personally notified.

Rule 83. Rules by District Courts.

Each district court by action of a majority of the judges thereof may from time to time make and amend rules governing its practice not inconsistent with these rules. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the Supreme Court of the United States. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.

Rules of the District Court of the United States for the Western District of New York:

Rule XI. Dismissal for Want of Prosecution.

In any cause or proceeding which might have been brought to trial or hearing, but in which no action has been taken by the parties for one year, it shall be the duty of the clerk to mail notice thereof to the attorneys of record or to the parties thereto, if their post-office addresses are known, thirty days before the opening of the next succeeding March or November term of court. If such notice has been given and no sufficient cause be shown at the opening of such term of court, an order of dismissal without prejudice shall be entered by the clerk as of course.

Rule XIII. *Note of Issue.*

Any party may place a cause upon the trial calendar of any term by filing and serving a note of issue in accordance with New York Rule of Civil Practice 150, and a new note of issue shall be necessary for any subsequent term.

Rule XVI. *Trial Calendar and Adjournments.*

Causes shall be placed on the trial calendar in the order of their respective dates of issue. The first ten causes on the calendar for any term shall constitute the day calendar for the first day fixed for the trial of civil causes at that term. The day calendar for each subsequent day of the term shall consist of ten causes taken in regular order from the general calendar of causes not disposed of, and shall be made up by the clerk not later than four P. M., on the preceding day. Any cause so placed on the day calendar by the clerk shall be deemed ready for trial and may be moved by either party who has served a notice of issue as provided in these rules. If the cause so placed on the day calendar is not moved by either party at the call of the calendar at the opening of court, it must be stricken from the calendar and shall not be restored to the same or to any subsequent calendar of the court except on motion on at least two days' notice and for good cause shown. No adjournments or continuances shall be allowed except for good cause shown.

APPENDIX B.

"GLG:LH

Department of Justice
United States Attorney
Western District of New York
Buffalo, N. Y.

January 25, 1941.

Mr. William B. Mahoney,
Attorney at Law,
405 Walbridge Bldg.,
Buffalo, N. Y.

SIR:

Re: Edward E. Trost vs. U. S.

No. 1321-A.

David W. Wallace vs. U. S.

No. 1320-A.

I talked with Judge Knight the other day about these cases. He is inclined to deny the motion to restore the Wallace case. He suggested, however, that an additional affidavit be filed, setting forth the fact that the Trost case is on the calendar and that the facts in each case are identical, with the exception of the amount involved and the name of the plaintiff.

He also suggested that attached to your affidavit you file suggested findings of fact. Then, if the Trost findings of fact are filed and the case presented for decision, he probably would be inclined to open the default in the Wallace case. There must be an agreement to proceed forthwith in each case, if the Wallace case is restored.

Please give this matter your immediate consideration.

Respectfully,

GEORGE L. GROBE,
United States Attorney."

APPENDIX C.

"March 20, 1941.

George Grobe,
U. S. District Attorney,
Courthouse,
Niagara Square,
Buffalo, N. Y.

DEAR GEORGE:

Re: *Trost v. United States*, *Wallace v. United States*.

More than three weeks have elapsed since I delivered to you stipulations in the above entitled matter and I wish that you would inform me as to whether or not these stipulations were forwarded to Washington and if so, whether or not they have been returned. If the latter fact may I have copies of the same by return mail.

Many thanks for your courtesy in this particular matter.

Very truly yours,

WILLIAM B. MAHONEY."

WMB:BS.

APPENDIX D.

“RMH:VM.

Department of Justice,
United States Attorney,
Western District of New York,
Buffalo, N. Y.

March 21, 1941.

Mr. William B. Mahoney,
Attorney at Law,
405 Walbridge Building,
Buffalo, New York.

SIR:

Re: David W. Wallace *v.* U. S., Edward E. Trost *v.*
U. S., Docket Nos. 1320-A & 1321-A.

In reply to your letter dated March 20, 1941, we beg to advise that there has been some delay by reason of the illness of Mr. Hitchcock.

You will please find enclosed herewith the original of a stipulation in each of the above cases. You will note that paragraphs 7 and 8 of your proposed stipulation dated February 6, 1941, have been slightly altered in the wording of each. You will likewise note that the stipulation itself has been reworded so as to permit evidence to be introduced at the trial with respect to the details of the various securities and stocks which are the subject matter of the dispute.

If the enclosures are satisfactory, please sign the same and return to us and we will thereupon sign them and submit conformed copies to you. We can then arrange for an interview with Judge Knight, at which time a date can be set for the trial of these actions.

Respectfully,

Encls.

GEORGE L. GROBE,
United States Attorney.”

APPENDIX E.

"RMH:VM.

Department of Justice,
United States Attorney,
Western District of New York,
Buffalo, N. Y.

April 22, 1941.

Mr. William B. Mahoney,
Attorney at Law,
405 Walbridge Building,
Buffalo, New York.

SIR:

Re: David W. Wallace *v.* U. S., Docket No. 1320-A.
Edward E. Trost *v.* U. S., Docket No. 1321-A.

In reply to your letter dated April 17, 1941, we beg to advise that you will please find enclosed herewith one copy of the stipulation of facts in each of the above entitled cases. The original of each was filed in the office of the Clerk of this Court on April 21, 1941.

If you will arrange with Mr. Hitchcock for an appointment with Judge Knight, we believe the trial could be set in each case for a day agreeable to all the parties.

Respectfully,

Encls.

GEORGE L. GROBE,
United States Attorney."

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